

10-01 North Carolina Department Of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001

TO REGISTERED TAXPAYERS:

IMPORTANT NOTICE - SALES AND USE TAX RATE CHANGE

I. INCREASE IN STATE SALES AND USE TAX RATE

The General Assembly enacted legislation to temporarily increase the State rate of sales and use tax by $\frac{1}{2}\%$. The increase will be effective October 16, 2001 and will expire June 30, 2003. Effective October 16, 2001, the general State rate of sales and use tax will increase from 4% to $4\frac{1}{2}\%$. Taxable sales or purchases that are subject to the general State rate of tax are also subject to the 2% county tax ($2\frac{1}{2}\%$ in Mecklenburg County) for a combined State and county rate of $6\frac{1}{2}\%$ (7% in Mecklenburg County). Taxable sales, gross receipts, and purchases that were subject to the 4% State rate of tax prior to October 16, 2001 will be subject to the $4\frac{1}{2}\%$ State rate of tax on and after October 16, 2001 with the following exceptions:

1. Gross receipts from the lease of tangible personal property that is delivered to a lessee prior to October 16, 2001 and leased for a definite stipulated period of time will continue to be subject to the 4% State tax and applicable county tax for the remainder of the lease.
2. Construction materials purchased or sold on and after October 16, 2001 to fulfill a lump sum or unit price contract entered into or awarded before October 16, 2001, or entered into or awarded pursuant to a bid made before October 16, 2001, will continue to be subject to the 4% State tax and applicable county tax. Form E-589, Affidavit to Exempt Contractors from the Additional $\frac{1}{2}\%$ State Tax, must be executed by the contractor to obtain the 4% State rate. Form E-589 is available from the Department and on the Department's website at www.dor.state.nc.us.

A sale is complete when delivery is made to the purchaser. Therefore, except for circumstances such as those above, the increased rate of sales and use tax will apply to all taxable sales and purchases of property delivered on or after the effective date of October 16, 2001, irrespective of the date the order was placed.

II. INSTRUCTIONS FOR REPORTING FOR OCTOBER 2001 THROUGH SEPTEMBER 2002

In October, monthly and semimonthly taxpayers will receive sales tax return booklets for the period October 2001 through September 2002. These booklets were printed before the General Assembly changed the law. As a result, the returns in these booklets do not contain a line for the new rate of tax. A separate worksheet describes how to use the returns in these booklets to report tax at both the existing 4% rate and the new $4\frac{1}{2}\%$ rate. Follow the instructions on the worksheet. The worksheet for the October return must be sent in with the return. A worksheet for the November return must be sent in with the return if the taxpayer owes tax for that period at both rates.

By early January, monthly and semimonthly taxpayers will receive new booklets for the period December 2001 through September 2002. The returns in the new booklets will have a line for tax at 4% and a separate line for tax at $4\frac{1}{2}\%$. These returns will eliminate

10,938

the need for the worksheet. When the new booklets are received, taxpayers should discard the previous booklets.

Quarterly taxpayers will receive booklets in December 2001. The returns in this booklet will have separate lines for tax at 4% and 4½% and will not require the use of a worksheet.

III. ADDITIONAL INFORMATION

If you have questions, you may call the Department at (919) 733-3661. You may also write to the Taxpayer Assistance Division at Post Office Box 25000, Raleigh, N.C. 27640 or contact a local office of the Department.

XXX

[¶202.120] Release: Frequently Asked Questions.**North Carolina Department of Revenue. May 22, 2001.**

Personal income—Withholding of tax—Withholding required—Withholding from nonresidents for personal services.—The North Carolina Department of Revenue has released answers to frequently asked questions concerning the state's withholding tax from nonresidents for personal services performed in the state. Issues discussed include definitions of common terms, evidence requirements for residency and tax exemptions, and what types of compensation are subject to withholding.

Frequently asked questions about withholding from nonresidents for personal services performed in North Carolina.

I. Definitions**What are “personal services?”**

The term “personal services” is not defined. However, income is generally derived in two ways: selling a product or providing a service. “Personal services” compensation is any compensation paid for providing a service. For purposes of the 4% withholding, the personal services subject to withholding are limited to personal services in connection with a performance, an entertainment or athletic event, a speech, or the creation of a film, radio, or television program.

What constitutes a “speech” for purposes of the 4% withholding?

Any speech that amuses, entertains, or informs is subject to the withholding requirement. This includes instructors at seminars that are open to the public for an admission fee or are for continuing education.

The definition of a nonresident entity refers to foreign limited liability companies, partnerships, and corporations. What does the term “foreign” mean?

The term “foreign” means a limited liability company, partnership, or corporation formed under the laws of any jurisdiction other than North Carolina.

II. Exceptions to Withholding**What proof should a venue require from a nonresident limited liability company or corporation that it has obtained a Certificate of Authority from the North Carolina Secretary of State or from a nonresident partnership that it has a permanent place of business in North Carolina?**

Corporations and limited liability companies that receive a Certificate of Authority from the Secretary of State are also issued an identification number. This number is different than the business's federal employer identification number. The payer should request that the contractor provide the identification number issued by the Secretary of State and maintain that number in its records. For partnerships, the venue should request that the partnership provide its federal identification number and its North Carolina address and maintain that information in its records.

What evidence should a payer obtain from a contractor that claims to be tax-exempt?

The payer should obtain from the contractor a copy of the contractor's federal determination letter of tax exemption or a letter of tax exemption from the Department of Revenue and maintain that information in its records.

What evidence should a payer obtain from an individual who claims to be a resident of North Carolina?

The payer should obtain the individual's North Carolina address and social security number and maintain that information in its records.

Can a contractor provide an affirmation or other statement that it will satisfy its income tax filing requirement and be exempt from withholding?

No. The only exceptions to withholding are those identified in the *Exceptions to Withholding* section of Directive PD-98-3. A contractor that qualifies for one of the exceptions to withholding is still subject to North Carolina income tax on the compensation received for services performed in North Carolina and must file the appropriate North Carolina income tax return to report the compensation.

If a contractor qualifies for one of the exceptions from withholding, does the payer still issue a Form NC-1099PS to the contractor and to the Department of Revenue?

No. A Form NC-1099PS is only required if North Carolina tax is withheld from the compensation.

Can a contractor provide a statement or evidence to show that the 4% withholding will be in excess of its tax liability?

No. Any excess withholding will be refunded upon the filing of an income tax return showing an overpayment of tax.

III . Contract Between Venue and Entertainer

Is a reimbursement for business expenses or a business expense allowance included in compensation and subject to withholding?

Pursuant to Treasury Regulation § 1.274-5T(h), the payment of business expenses through a reimbursement or other expense allowance arrangement is excludable from income by a contractor if the expenses are substantiated to the payer by the contractor under an accountable plan. "Business expenses" means ordinary and necessary expenses for travel, transportation, and entertainment that are deductible under Internal Revenue Code section 162. To be properly substantiated under an accountable plan, the reimbursement must be paid only if receipts are furnished to substantiate the expenses or the expenses are allowed under an acceptable per diem arrangement. Those reimbursed or direct-billed business expenses that are not taxable pursuant to the above-cited regulation because they have been properly substantiated are not subject to the 4% withholding.

If the venue pays business expenses directly instead of reimbursing the contractor, is the amount paid subject to withholding?

No, to the extent the expenses qualify as business expenses under Code section 162.

The contract between the venue and the performing group includes two types of payment; a guaranteed fee and a profit split from the actual performance. The guaranteed fee represents an up-front payment to cover the costs incurred for show preparation, including casting, stage design, and performance rehearsals and salaries. This fee must be paid even if the performance is never done. The profit split is the performing group's share of the performance profits. To what extent is withholding required?

The guaranteed fee is apportioned to North Carolina and subject to withholding based on the amount of time spent in North Carolina either preparing for the performance or performing using the duty day method of apportionment. If the company believes that the duty day method does not equitably apportion the income, it may submit an alternative method for the Department's approval. The profit split is fully taxable in North Carolina and subject to the 4% withholding.

Is compensation paid to contract labor working at an athletic or entertainment souvenir sales operation subject to withholding?

Yes, if the contract laborer is a nonresident and the compensation exceeds \$1,500. The definition of contractor includes compensation for personal services in connection with a performance, etc. Services performed by the contract laborer at the souvenir sales operation are in connection with the event.

A venue signs a \$10,000 contract with a performer in 2000 for a performance scheduled for 2001. The venue is required to place \$2,000 in an escrow account held by the performer's agent at the time the contract is signed. How much withholding is required in each year?

No, withholding is required in 2000 because the performer has not performed any personal services in North Carolina during that year. The venue must withhold \$400 (\$10,000 X 4%) in 2001 when the services are performed.

IV . Contract Between Venue and Promoter (Agent)

If a venue contracts with a promoter to find an entertainer and the venue enters into a separate contract with the performer, is the compensation paid to the promoter by the venue subject to withholding?

No, unless the promoter physically performed services in North Carolina.

If a venue contracts with a promoter to find an entertainer and the promoter enters into a contract with the performer, is the compensation paid to the promoter by the venue subject to withholding?

The answer depends on whether the promoter is an entity or an individual. If the promoter is an entity, tax must be withheld because the entity is deemed to be doing business in North Carolina through its agent (the entertainer). If the promoter is an individual, tax is only required to be withheld from the payment to the promoter to the extent the promoter performed services in North Carolina.

If a venue contracts with a promoter to find an entertainer and the promoter enters into a contract with the entertainer, who is responsible to withhold tax from the compensation paid to the entertainer?

The promoter is responsible to withhold from the compensation paid to the entertainer because the entertainer is providing a personal service for the promoter.

Can a promoter that is responsible for withholding from the compensation paid to an entertainer contract with the venue to withhold the tax?

The Department of Revenue has no objection to a venue satisfying a promoter's withholding responsibility if the venue is willing to accept that responsibility. However, the promoter is the entity required by law to withhold the tax and could be pursued by the Department of Revenue for collection if the tax is not withheld or is withheld but not remitted to the Department by the venue. A contractual provision between the promoter and the venue shifting the responsibility to the venue is not binding on the Department since the department is not a party to the contract.

A promoter rents a facility from a venue and contracts with a nonresident entertainer. The venue sells tickets to the event and deducts the rent and other fees and expenses from the gross ticket proceeds before payment to the promoter. On what amount is withholding required?

No withholding is required from the ticket proceeds paid to the promoter because the promoter is not providing a personal service for the venue. The promoter is required to withhold from the compensation paid to the entertainer because the entertainer is providing a personal service in North Carolina.